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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/573,731	03/27/2006	Martin Dottling	071308.1010 (2003P11446WO)	2258
31625	7590	10/07/2009	EXAMINER	
BAKER BOTTS L.L.P. PATENT DEPARTMENT 98 SAN JACINTO BLVD., SUITE 1500 AUSTIN, TX 78701-4039			ZEWDU, MELESS NMN	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/573,731	Applicant(s) DOTTLING ET AL.	
	Examiner Meless N. Zewdu	Art Unit 2617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 June 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 23-25, 27-30, 35 and 41-44 is/are rejected.
- 7) ☒ Claim(s) 26, 31-34 and 36-40 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 March 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/29/09</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to the communication filed on 6/29/09.
2. Claims 1-22 were previously canceled.
3. Claims 23-44 are pending in this action.
4. This action is final.

Claim Objections

Claim 4 is objected to because of the following informalities: “a transmitting device” on line 6 should be --- the transmitting device ---. Appropriate correction is required.

Claim 4 is objected to because of the following informalities: “the channel number” on line 3 should be --- a channel number ---. Appropriate correction is required.

Claim 26 is objected to because of the following informalities: “the transmission time interval” on line 3 should be --- a transmission time interval ---. Appropriate correction is required.

Claim 27 is objected to because of the following informalities: “a data packet” on line 2 should be --- the data packet ---. Appropriate correction is required.

Claim 28 is objected to because of the following informalities: “the data transmission” on line 2, should be --- the data packet transmission ---. Appropriate correction is required.

Claim 28 is objected to because of the following informalities: "at least one" on line 2, should be --- the at least one ---. Appropriate correction is required.

Claim 29 is objected to because of the following informalities: "data transmission" on line 2, should be --- data packet ----. Appropriate correction is required.

Claim 29 is objected to because of the following informalities: "at least one" on line 3 should be --- the at least one ---. Appropriate correction is required.

Claim 30 is objected to because of the following informalities: "a data packet" on line 3 should be --- the data packet ---. Appropriate correction is required.

Claim 31 is objected to because of the following informalities: "the time channels" on line 3 and "the time channel" on line 4, lack antecedent basis.

Claim 31 is objected to because of the following informalities: "a data packet" on line 4 should be --- the data packet ---. Appropriate correction is required.

Claim 32 is objected to because of the following informalities: "the number of packet numbers" on lines 1-2 does not have antecedent basis. Appropriate correction is required.

Claim 32 is objected to because of the following informalities: "and/or number" on line 2 should be --- and/or a number ---. Appropriate correction is required.

Claim 32 is objected to because of the following informalities: "the time channels" on line 3 should be --- the plurality of different time channels ---. Appropriate correction is required.

Claim 34 is objected to because of the following informalities: “the time channels” on line 3 should be ---- the plurality of different time channels ---. Appropriate correction is required.

Claim 35 is objected to because of the following informalities: “time channel” on line 3 should be --- the number of different time channels ---. Appropriate correction is required.

Claim 35 is objected to because of the following informalities: “the numbers of packet numbers” on lines 3-4 lack antecedent basis. Appropriate correction is required.

Claim 35 is objected to because of the following informalities: “the redundancy version indicators” lack antecedent basis. Appropriate correction is required.

Claim 36 is objected to because of the following informalities: “the plurality of time channels” on line 4 should be --- the plurality of different time channels ---. Appropriate correction is required.

Claim 37 is objected to because of the following informalities: “the numbers of packet numbers” lack antecedent basis. Appropriate correction is required.

Claim 37 is objected to because of the following informalities: “the individual time channels” on line 3 should be --- the individual time channels in the plurality of different time channels ---. Appropriate correction is required.

Claim 37 is objected to because of the following informalities: “the channel numbers” on line 4 lacks antecedent basis.. Appropriate correction is required.

Claim 37 is objected to because of the following informalities: “the available time channels” on lines 4-5 lacks antecedent basis. Appropriate correction is required.

Claim 38 is objected to because of the following informalities: “the one of the plurality of time channels” lacks antecedent basis and needs to include “different” to read as --- plurality of different time channels. Appropriate correction is required.

Claim 39 is objected to because of the following informalities: “different time channels” on line 3 should be ---- different time channels in the plurality of different time channels ---. Appropriate correction is required.

Claim 40 is objected to because of the following informalities: “the one of the plurality of time channels” on line 2 lacks antecedent basis and needs to include “different” so as to read as ---different time channels in the plurality of different time channels ---. Appropriate correction is required.

Claim 40 is objected to because of the following informalities: “different time channels” on lines 3-4 should be --- different time channels in the plurality of different time channels ---. Appropriate correction is required.

Claim 40 is objected to because of the following informalities: “the use time” on line 3 lacks antecedent basis. Appropriate correction is required.

Claim 44 is objected to because of the following informalities: “between” on line 3 should be ---- from ---. Appropriate correction is required.

Examiner’s remarks: examiner has tried extensively to address the numerous informalities found the claims, and reminds applicant to further check and correct any informality that may have escaped examiner’s effort.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 23-25, 27-30, 32, 35 and 41-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's admitted prior art (APA) in view of Winga HO (HO) (GB 2 350 984 A).

As per claim 23: while the physical channel is considered as an intended use (for it does not enhance the body of the claim), the APA discloses about a method for transmitting control parameters on a physical channel between a mobile radio device and a base station in a cellular network (see spec. paragraph 0002), comprising:

providing with the control parameters a packet number for identifying a data packet (see spec. paragraph 0009, lines 1-3) ; and

wherein the control parameters are used for controlling a packet-oriented data transmission between the mobile radio device and the base station (see spec. paragraph 0007). But, the APA does not explicitly teach about source coding the packet number at least together with a further control parameter for the transmission, as claimed. However, in the same field of endeavor, Ho teaches about transmitting the encoded packet data to said receiving digital system as a packet including a header having a packet number and a tag identifying the encoding information used to encode

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the packet (see page 2, lines 6-32, particularly lines 1618). Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify the teaching provided by APA with that of Ho for the advantage of conditioning an encoder information to rebuild a new encoder information without the lost packet data when a packet is lost (see page 2, lines 28-29).

As per claim 24: the APA teaches a method, further comprising:

implementing by a temporal distribution of the same physical channel, a plurality of different time channels available for sending data packets (see spec. paragraphs 0003, 0004-0005) ; and

re-transmitting a data packet on one of the plurality of different time channels using a transmitting device in each instance, until the transmitting device receives a confirmation signal from a receiving device (see spec. paragraph 0007).

As per claim 25: the APA teaches about a method, further

comprising including with at the least one further control parameter, the channel number of the one of the plurality of different time channels, in which the data packet in question is sent (see spec paragraph 0009).

As per claim 27: the APA teaches about a method, wherein a number

of re-transmissions of a data packet are superimposed to decode a data packet see spec. paragraph 0011).

As per claim 28: the APA teaches about a method, wherein an incremental redundancy method is used during the data transmission and at least one further control parameter includes a redundancy version indicator (see spec. paragraphs 0007-0008). NDI of the

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APA can be considered as a RV.

As per claim 29: the APA teaches about a method, wherein the data transmission takes place by means of a multi-channel HARQ transmission method and at least one further control parameter includes an HARQ parameter.(see spec. paragraphs 0005-0006, 0013).

As per claim 30: the APA teaches about a method, wherein different numbers of packet numbers are assigned to different time channels, which are available for identifying a data packet on the time channel in question (see spec. paragraph 0004).

As per claim 32: the APA teaches about a method, wherein the number of packet numbers and/or number of redundancy version indicators of at least one of the time channels is/are variable (question (see spec. paragraph 0008).

As per claim 35: the APA teaches about a method, wherein transmission resources are allocated to a specific transmitting device taking into account the number of time channels used by the device in question and/or the numbers of packet numbers and/or numbers of the redundancy version indicators of the different time channels of the device in question (see spec . paragraph 0004)..

As per claim 41: the features of claim 41 are similar to the features of claim 23, except claim 41 is directed to an apparatus (a mobile radio device) which is required/intended to perform the steps of claim 23. Hence, since the apparatus is required to perform the steps in question (which are obviated by the prior art of record), claim 41 is rejected on the same ground and motivation as claim 23.

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As per claim 42: the features of claim 42 are similar to the features of claim 23, except claim 42 is directed to an apparatus (base station) which is required/intended to perform the steps of claim 23. Hence, since the apparatus is required to perform the steps in question (which are obviated by the prior art of record), claim 42 is rejected on the same ground and motivation as claim 23.

As per claim 43: the features of claim 43 are similar to the features of claim 23, except claim 43 is directed to an apparatus (a mobile radio device) which is required/intended to perform the steps of claim 23. Hence, since the apparatus is required to perform the steps in question (which are obviated by the prior art of record), claim 43 is rejected on the same ground and motivation as claim 23.

As per claim 44: the features of claim 44 are similar to the features of claim 23, except claim 44 is directed to an apparatus (base station) which is required/intended to perform the steps of claim 23. Hence, since the apparatus is required to perform the steps in question (which are obviated by the prior art of record), claim 44 is rejected on the same ground and motivation as claim 23.

Allowable Subject Matter

Claims 26, 31-34 and 36-40 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Note: this indication of

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allowability subject matter is valid provided the informalities of claims addressed under the heading "claim objection" above is addressed.

Response to Arguments

Applicant's arguments filed 6/29/09 have been fully considered but they are not persuasive. Applicant's arguments and corresponding examiner's responses are presented as shown below.

Preliminary Remarks by Examiner:

I The amended title has been approved by examiner.

II. Regarding the drawing objections, examiner admits that the argument presented by under 37 C.F.R. § 1.83 (a) is convincing. Consequently, the drawing objection provided in the preceding Office Action has been withdrawn.

II. in response to the instant amendment, the 101 rejection of claim 23 has been removed.

III. in response to the instant amendment, the rejection under the second paragraph of 35 U.S.C 112, has been removed.

Arguments and Responses:

Argument I: with regard to the combination of the references applied to the claims in general, applicant inquires examiner by stating ---- the examiner must identify an apparent reason to combine the known elements in the fashion claimed. Id
"Rejections on obvious grounds cannot be sustained by mere conclusory (conclusion)

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statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." "Finally, the reason must be free of the distortion caused by hindsight bias and may not rely on ex post reasoning (emphasis added)." In Brief applicant is raising issues relating to lack of motivation/reasoning for combining the references and the use of hindsight by examiner.

Response I: examiner respectfully disagrees with the argument. In that the reasoning/motivation is provided by Ho as --- conditioning an encoder information to rebuild a new encoder information without the lost packet data when a packet is lost (see page 2, lines 14-21, lines 28-32). In view this Ho's reasoning, examiner sees no lack of motivation nor apparent use of hindsight, as argued by applicant. Thus, the argument is not found to be persuasive.

Argument II: with regard to claim 23, applicant asserts that the APA (applicant admitted prior art) fails to teach or suggest source coding the packet number together with at least one control parameter for transmission (emphasis added).

Response II: examiner respectfully disagrees with the argument. In that, the APA is not used/cited as --- teaching or suggesting for source coding the packet number together with at least one control parameter for transmission. It is clear from the Office Action that HO is relied upon to teach this feature. Hence, the argument is not persuasive.

Argument III: with regard to claim 23, applicant argues by saying, while Ho makes mention of a packet number, Ho fails no mention of control parameter(s), and

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hence fails to teach or suggest that the packet number is source coded together with a control parameter for transmission as recited in claim 23 (emphasis added).

Response III: examiner respectfully disagrees with the argument. in that Ho, among others, states the following fact: transmitting the encoded packet data to said receiving digital system as a packet including a header having a packet number and a tag identifying the encoded information used to encode the packet data (emphasis added) (see abstract; page lines 16-18). It is to be noted that the header having the packet number and a tag is a control frame/information encoded and transmitted to a receiver with a packet data to help identify the same. In order to send packet data including/together with a packet number in a header, one of ordinary skill recognizes that both types of these data must be encoded together by a source encoder so that they can be transmitted together. On the other hand, even if one accepts that the packet data and the packet number are encoded separately (as implied by applicant), it is not possible not to accept the fact that they are transmitted together (refer to HO). Consequently the question reduces down to the difference between separately encoding and encoding together the two data. For this difference to have patentable weight, claim 23 does not show criticality, as to why encoding together is advantageous over separate encoding. Hence, the argument is not persuasive.

Argument III: with regard to claim 23 (and by the same analogy with regard to claims 41-44), applicant concludes by saying --- Ho separately or as combined with the alleged APA does not teach or suggest the elements of Independent claim 23 (emphasis added).

Response III: examiner respectfully disagrees with the argument. in that, as stated above, the APA discloses all features of claim 23, except --- the packet number is source coded together with a control parameter for transmission. But, this deficiency, i the APA is provided by Ho's reference, as stated in the rejection and the above responses. Consequently, the combination of the APA and HO obviates claims 23 and 41-44. The motivation/reasoning for combining the two references is provided by HO, as stated in response I above. Hence, the argument is not found to be persuasive.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Meless N. Zewdu whose telephone number is (571) 272-7873. The examiner can normally be reached on 8:30 am to 5:00 pm..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chang Kent W can be reached on (571) 272-7667. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Any inquiry of a general nature relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-2600.

/Meless N Zewdu/

Primary Examiner, Art Unit 2617

10/7/2009